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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ANTHONY DOWDEN,

Defendant and Appellant.

B269359

(Los Angeles County
Super. Ct. No. GA035494

APPEAL from a judgment of the Superior Court of Los Angeles County. Dorothy L. Shubin, Judge. Affirmed.

Michael Anthony Dowden, in pro. per.; and Adrian K. Panton, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 1998 a jury convicted Michael Anthony Dowden of count 1, assault with a deadly weapon or by means of force likely to produce great bodily injury, with a finding of personal firearm use (Pen. Code, § 12022.5, subd. (a)(1)¹); count 2, attempted first degree robbery, with findings that defendant personally and intentionally discharged a firearm, causing great bodily injury (§ 12022.53, subd. (d)) and personally used a firearm (§ 12022.5, subd. (a)(1)); and counts 3 through 5, first degree robbery with a finding of personal firearm use (§ 12022.5, subd. (a)(1)). The trial court sentenced defendant to an aggregate term of 35 years to life. Of pertinence to this appeal, the court selected count 2 as the principal term and imposed a 2-year base term plus a section 12022.53, subdivision (d) enhancement of 25 years to life. The crimes giving rise to defendant's convictions and sentence stemmed from a 1997 home invasion robbery in Pasadena in which defendant aimed a gun at the chest of one of the eight or nine occupants of the house and, after a struggle, shot him.

In 2015 defendant filed in the trial court a motion for resentencing or sentence modification or correction based upon his belief that a section 12022.53, subdivision (d) enhancement requires conviction of a gang-related crime. The trial court denied defendant's motion on two grounds: it was untimely and it had no merit. The court explained, in part, "Section 12022.53(d) does not require proof of a gang related crime."

Defendant appealed the trial court's ruling. We appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. Defendant filed his own supplemental brief, *in propria persona*.

In defendant's supplemental brief he argues the same theory set forth in his motion filed in the trial court. He argues, in essence, that subdivision (d) of section 12022.53 somehow incorporates subdivision (e) of the statute, and therefore pleading and proof of an allegation under subdivision (d) includes the requirement of a finding of a violation of

¹ Undesignated statutory references are to the Penal Code.

section 186.22, subdivision (b), i.e., a gang enhancement finding. As the trial court explained, defendant is wrong. Subdivisions (b) through (d) of section 12022.53 apply to a person who *personally* uses a gun (subd. (b)), *personally* and intentionally fires a gun (subd. (c)), or *personally* and intentionally fires a gun causing great bodily injury or death (subd. (d)). Subdivision (e) extends the enhancements set forth in subdivisions (b) through (d) to accomplices of principals who “committed any act specified in subdivision (b), (c), or (d)” and who “violated subdivision (b) of Section 186.22.” Subdivision (e) thus extends the reach of subdivisions (b) through (d) in limited circumstances. It does not set forth an additional requirement for pleading or proof where the defendant *personally* commits any of the acts set forth in subdivisions (b), (c), or (d). Defendant was alleged and found to have *personally* and intentionally fired a gun causing great bodily injury. No resort to subdivision (e) was entailed because defendant *personally* committed this act. Thus, no gang allegation or finding was required.

We have examined the entire record and are satisfied that defendant’s attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

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LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.